

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA

v.

JOSEPH KENNY BATTS

Criminal No. 18-215 (MAS)

MEMORANDUM ORDER

This matter comes before the Court upon review of its docket. In his April 23, 2020 sentencing memorandum, Defendant Joseph Kenny Batts (“Defendant”) argued that “in the absence of a new trial or evidentiary hearing related to the co-conspirators’ tax loss amounts, this Court can neither consider the relevant conduct requested by the Government nor make a reasonable estimate of the total tax loss attributable to [Defendant].” (Def.’s Apr. 23, 2020 Correspondence 2.) The Government responded to Defendant’s arguments regarding the appropriate loss amount, asserting “it has met its burden to prove . . . the loss in this case . . . by a preponderance of the evidence” but “would be prepared to present testimony . . . at an evidentiary hearing.” (Gov’t’s Apr. 27, 2020 Correspondence 3.) The Court adjourned the sentencing hearing and ordered Defendant to submit additional briefing regarding the appropriate tax loss and restitution. (Apr. 29, 2020 Text Order, ECF No. 118.)

Following that briefing, the Court ordered the Government to file a supplemental submission providing additional support in favor of its asserted tax loss. (Sept. 24, 2020 Order, ECF No. 125.) Pursuant to the Court’s order, on October 8, 2020, the Government submitted an affidavit from IRS Revenue Agent Robert Illuzzi. (Illuzzi Aff., ECF No. 129.) In that Affidavit, the Government presents the Court with an explanation as to how its tax loss analysis was conducted. (*Id.* ¶ 2.) The Government also asserts that the documents attached to the Illuzzi

Affidavit contain the underlying data for its tax loss analysis. (*See Exhibits to Illuzzi Aff.*, ECF No. 129-1 (filed under seal).)

The Court's September 24, 2020 Order provided Defendant an opportunity to respond to the Government's supplemental submission by October 15, 2020. (Sept. 24, 2020 Order 2.) To date, Defendant has not elected to respond.

Accordingly, for the reasons set forth above and for other good cause shown,

IT IS on this 5th day of January 2021 **ORDERED** that:

1. The Court will provide the Defendant with one final opportunity to respond to the Government's October 8, 2020 supplemental submission. Defendant may respond in writing by January 12, 2021. The Government may reply by January 19, 2021.
2. If the Court does not receive a response from the Defendant by January 12, 2021, the Court will hold a sentencing hearing on this matter on February 4, 2021 at 2 p.m.



MICHAEL A. SHIPP
UNITED STATES DISTRICT JUDGE